

AMENDED IN SENATE JULY 27, 1998  
AMENDED IN SENATE JULY 13, 1998  
AMENDED IN SENATE JUNE 24, 1998  
AMENDED IN SENATE MARCH 16, 1998  
AMENDED IN ASSEMBLY JANUARY 28, 1998  
AMENDED IN ASSEMBLY JANUARY 12, 1998  
AMENDED IN ASSEMBLY JANUARY 5, 1998

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1290**

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**Introduced by Assembly Member Havice**  
(Principal coauthor: Senator Peace)

February 28, 1997

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An act to amend Sections 261.5, 288, 667.71, 1170.1, and 12022.53 of the Penal Code, and to amend Sections 676, 707, and 828.1 of the Welfare and Institutions Code, relating to crime and punishment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1290, as amended, Havice. Kidnapping.

(1) Existing law, as interpreted by the California Court of Appeal, provides that subdivision (b) of Section 208 of the Penal Code, imposing increased punishment for kidnapping a child under the age of 14 years, is a distinct crime rather than a penalty enhancement.

This bill would declare the Legislature's intent that the above provision establishes a penalty enhancement for the crime of simple kidnapping, not a separate offense, and would make conforming changes. Because this bill would expand the definition of an existing crime, it would create a state-mandated local program.

(2) Existing law prohibits and prescribes punishments for unlawful sexual intercourse with a minor.

This bill would make technical, nonsubstantive amendments to these provisions.

(3) Existing law makes it a crime for a person to commit specified lewd or lascivious acts with a specified sexual intent, if the victim is a child of 14 or 15 years of age, and the person is at least 10 years older than the child.

This bill would require that in determining whether the person is at least 10 years older than the child, the difference in age be measured from the birth date of the person to the birth date of the child.

(4) Existing law requires that a habitual sex offender, as defined, be imprisoned in the state prison for 25 years to life. A habitual sex offender is defined to mean a person who has been previously convicted of one or more specified offenses and who is convicted in the present proceeding of one of those offenses.

This bill would add to the list of specified offenses defining a habitual sex offender, the crime of continuous sexual abuse of a child.

(5) Existing law requires imposition of an enhanced term of imprisonment on any person who is convicted of a specified felony and who, in the commission of that felony, personally used a firearm, intentionally and personally discharged a firearm, or intentionally and personally discharged a firearm and proximately caused great bodily injury as defined.

This bill, by cross-reference, would make applicable, where this enhancement has been imposed, provisions of existing law that do the following: require admission of the public to a juvenile court hearing; require consideration of certain information in the juvenile court's determination of whether a minor is a fit and proper subject to be dealt with under the juvenile court law; and prescribe a sentence enhancement or

increased punishment of a person who is convicted of any of a specified offense.

(6) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(7) *This bill also would do the following:*

(A) *Incorporate amendments to Section 1170.1 of the Penal Code proposed by both this bill and SB 1900 which shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 1170.1 of the Penal Code, and (3) this bill is enacted after SB 1900.*

(B) *Incorporate amendments to Section 12022.53 of the Penal Code proposed by both this bill and SB 2168 which shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 12022.53 of the Penal Code, and (3) this bill is enacted after SB 2168.*

(C) *Incorporate amendments to Section 676 of the Welfare and Institutions Code proposed by both this bill and SB 2168 which shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 676 of the Welfare and Institutions Code, and (3) this bill is enacted after SB 2168.*

(D) *Incorporate amendments to Section 707 of the Welfare and Institutions Code proposed by both this bill and SB 2168 which shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 707 of the Welfare and Institutions Code, and (3) this bill is enacted after SB 2168.*

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 261.5 of the Penal Code is  
2 amended to read:

1     261.5. (a) Unlawful sexual intercourse is an act of  
2 sexual intercourse accomplished with a person who is not  
3 the spouse of the perpetrator, if the person is a minor. For  
4 the purposes of this section, a “minor” is a person under  
5 the age of 18 years and an “adult” is a person who is at least  
6 18 years of age.

7     (b) Any person who engages in an act of unlawful  
8 sexual intercourse with a minor who is not more than  
9 three years older or three years younger than the  
10 perpetrator, is guilty of a misdemeanor.

11     (c) Any person who engages in an act of unlawful  
12 sexual intercourse with a minor who is more than three  
13 years younger than the perpetrator is guilty of either a  
14 misdemeanor or a felony, and shall be punished by  
15 imprisonment in a county jail not exceeding one year, or  
16 by imprisonment in the state prison.

17     (d) Any person 21 years of age or older who engages  
18 in an act of unlawful sexual intercourse with a minor who  
19 is under 16 years of age is guilty of either a misdemeanor  
20 or a felony, and shall be punished by imprisonment in a  
21 county jail not exceeding one year, or by imprisonment  
22 in the state prison for two, three, or four years.

23     (e) (1) Notwithstanding any other provision of this  
24 section, an adult who engages in an act of sexual  
25 intercourse with a minor in violation of this section may  
26 be liable for civil penalties in the following amounts:

27     (A) An adult who engages in an act of unlawful sexual  
28 intercourse with a minor less than two years younger than  
29 the adult is liable for a civil penalty not to exceed two  
30 thousand dollars (\$2,000).

31     (B) An adult who engages in an act of unlawful sexual  
32 intercourse with a minor at least two years younger than  
33 the adult is liable for a civil penalty not to exceed five  
34 thousand dollars (\$5,000).

35     (C) An adult who engages in an act of unlawful sexual  
36 intercourse with a minor at least three years younger than  
37 the adult is liable for a civil penalty not to exceed ten  
38 thousand dollars (\$10,000).

39     (D) An adult over the age of 21 years who engages in  
40 an act of unlawful sexual intercourse with a minor under

1 16 years of age is liable for a civil penalty not to exceed  
2 twenty-five thousand dollars (\$25,000).

3 (2) The district attorney may bring actions to recover  
4 civil penalties pursuant to this subdivision. From the  
5 amounts collected for each case, an amount equal to the  
6 costs of pursuing the action shall be deposited with the  
7 treasurer of the county in which the judgment was  
8 entered, and the remainder shall be deposited in the  
9 Underage Pregnancy Prevention Fund, which is hereby  
10 created in the State Treasury. Amounts deposited in the  
11 Underage Pregnancy Prevention Fund may be used only  
12 for the purpose of preventing underage pregnancy upon  
13 appropriation by the Legislature.

14 ~~SEC. 4.~~

15 *SEC. 2.* Section 288 of the Penal Code is amended to  
16 read:

17 288. (a) Any person who willfully and lewdly  
18 commits any lewd or lascivious act, including any of the  
19 acts constituting other crimes provided for in Part 1, upon  
20 or with the body, or any part or member thereof, of a child  
21 who is under the age of 14 years, with the intent of  
22 arousing, appealing to, or gratifying the lust, passions, or  
23 sexual desires of that person or the child, is guilty of a  
24 felony and shall be punished by imprisonment in the state  
25 prison for three, six, or eight years.

26 (b) (1) Any person who commits an act described in  
27 subdivision (a) by use of force, violence, duress, menace,  
28 or fear of immediate and unlawful bodily injury on the  
29 victim or another person, is guilty of a felony and shall be  
30 punished by imprisonment in the state prison for three,  
31 six, or eight years.

32 (2) Any person who is a caretaker and commits an act  
33 described in subdivision (a) upon a dependent adult by  
34 use of force, violence, duress, menace, or fear of  
35 immediate and unlawful bodily injury on the victim or  
36 another person, with the intent described in subdivision  
37 (a), is guilty of a felony and shall be punished by  
38 imprisonment in the state prison for three, six, or eight  
39 years.

1 (c) (1) Any person who commits an act described in  
2 subdivision (a) with the intent described in that  
3 subdivision, and the victim is a child of 14 or 15 years, and  
4 that person is at least 10 years older than the child, is guilty  
5 of a public offense and shall be punished by imprisonment  
6 in the state prison for one, two, or three years, or by  
7 imprisonment in a county jail for not more than one year.  
8 In determining whether the person is at least 10 years  
9 older than the child, the difference in age shall be  
10 measured from the birth date of the person to the birth  
11 date of the child.

12 (2) Any person who is a caretaker and commits an act  
13 described in subdivision (a) upon a dependent adult,  
14 with the intent described in subdivision (a), is guilty of a  
15 public offense and shall be punished by imprisonment in  
16 the state prison for one, two, or three years, or by  
17 imprisonment in a county jail for not more than one year.

18 (d) In any arrest or prosecution under this section or  
19 Section 288.5, the peace officer, district attorney, and the  
20 court shall consider the needs of the child victim and shall  
21 do whatever is necessary, within existing budgetary  
22 resources, and constitutionally permissible to prevent  
23 psychological harm to the child victim or to prevent  
24 psychological harm to the dependent adult victim  
25 resulting from participation in the court process.

26 (e) Upon the conviction of any person for a violation  
27 of subdivision (a) or (b), the court may, in addition to any  
28 other penalty or fine imposed, order the defendant to pay  
29 an additional fine not to exceed ten thousand dollars  
30 (\$10,000). In setting the amount of the fine, the court shall  
31 consider any relevant factors, including, but not limited  
32 to, the seriousness and gravity of the offense, the  
33 circumstances of its commission, whether the defendant  
34 derived any economic gain as a result of the crime, and  
35 the extent to which the victim suffered economic losses  
36 as a result of the crime. Every fine imposed and collected  
37 under this section shall be deposited in the  
38 Victim-Witness Assistance Fund to be available for  
39 appropriation to fund child sexual exploitation and child



1 sexual abuse victim counseling centers and prevention  
2 programs pursuant to Section 13837.

3 If the court orders a fine imposed pursuant to this  
4 subdivision, the actual administrative cost of collecting  
5 that fine, not to exceed 2 percent of the total amount paid,  
6 may be paid into the general fund of the county treasury  
7 for the use and benefit of the county.

8 (f) For purposes of paragraph (2) of subdivision (b)  
9 and paragraph (2) of subdivision (c), the following  
10 definitions apply:

11 (1) "Caretaker" means an owner, operator,  
12 administrator, employee, independent contractor, agent,  
13 or volunteer of any of the following public or private  
14 facilities when the facilities provide care for elder or  
15 dependent adults:

16 (A) Twenty-four hour health facilities, as defined in  
17 Sections 1250, 1250.2, and 1250.3 of the Health and Safety  
18 Code.

19 (B) Clinics.

20 (C) Home health agencies.

21 (D) Adult day health care centers.

22 (E) Secondary schools that serve dependent adults  
23 ages 18 to 22 years and postsecondary educational  
24 institutions that serve dependent adults or elders.

25 (F) Sheltered workshops.

26 (G) Camps.

27 (H) Community care facilities, as defined by Section  
28 1402 of the Health and Safety Code, and residential care  
29 facilities for the elderly, as defined in Section 1569.2 of the  
30 Health and Safety Code.

31 (I) Respite care facilities.

32 (J) Foster homes.

33 (K) Regional centers for persons with developmental  
34 disabilities.

35 (L) A home health agency licensed in accordance with  
36 Chapter 8 (commencing with Section 1725) of Division  
37 2 of the Health and Safety Code.

38 (M) An agency that supplies in-home supportive  
39 services.

40 (N) Board and care facilities.

(O) Any other protective or public assistance agency that provides health services or social services to elder or dependent adults, including, but not limited to, in-home supportive services, as defined in Section 14005.14 of the Welfare and Institutions Code.

(P) Private residences.

(2) “Board and care facilities” means licensed or unlicensed facilities that provide assistance with one or more of the following activities:

(A) Bathing.

(B) Dressing.

(C) Grooming.

(D) Medication storage.

(E) Medical dispensation.

(F) Money management.

(3) “Dependent adult” means any person 18 years of age or older who has a mental disability or disorder that restricts his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have developmental disabilities, persons whose mental abilities have significantly diminished because of age.

(g) Paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c) apply to the owners, operators, administrators, employees, independent contractors, agents, or volunteers working at these public or private facilities and only to the extent that the individuals personally commit, conspire, aid, abet, or facilitate any act prohibited by paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c).

(h) Paragraph (2) of subdivision (b) and paragraph (2) of subdivision (c) do not apply to a caretaker who is a spouse of, or who is in an equivalent domestic relationship with, the dependent adult under care.

~~SEC. 2.~~

SEC. 3. Section 667.71 of the Penal Code is amended to read:

667.71. (a) For the purpose of this section, a habitual sexual offender is a person who has been previously convicted of one or more of the offenses listed in



1 subdivision (c) and who is convicted in the present  
2 proceeding of one of those offenses.

3 (b) A habitual sexual offender is punishable by  
4 imprisonment in the state prison for 25 years to life.  
5 Article 2.5 (commencing with Section 2930) of Chapter  
6 7 of Title 1 of Part 3 shall apply to reduce any minimum  
7 term of 25 years in the state prison imposed pursuant to  
8 this section. However, in no case shall the minimum term  
9 of 25 years be reduced by more than 15 percent for credits  
10 granted pursuant to Section 2933, 4019, or any other law  
11 providing for conduct credit reduction. In no case shall  
12 any person who is punished under this section be released  
13 on parole prior to serving at least 85 percent of the  
14 minimum term of 25 years in the state prison.

15 (c) This section shall apply to any of the following  
16 offenses:

17 (1) A violation of paragraph (2) of subdivision (a) of  
18 Section 261.

19 (2) A violation of paragraph (1) of subdivision (a) of  
20 Section 262.

21 (3) A violation of Section 264.1.

22 (4) A violation of subdivision (a) or (b) of Section 288.

23 (5) A violation of subdivision (a) of Section 289.

24 (6) A violation of Section 288.5.

25 (7) A violation of subdivision (c) of Section 286 by  
26 force, violence, duress, menace, or fear of immediate and  
27 unlawful bodily injury on the victim or another person.

28 (8) A violation of subdivision (d) of Section 286.

29 (9) A violation of subdivision (c) or (d) of Section 288a  
30 by force, violence, duress, menace, or fear of immediate  
31 and unlawful bodily injury on the victim or another  
32 person.

33 (10) A violation of subdivision (b) of Section 207.

34 (11) A violation of former subdivision (d) of Section  
35 208 (kidnapping to commit specified sex offenses).

36 (12) Kidnapping in violation of Section 209 with the  
37 intent to commit rape, spousal rape, oral copulation, or  
38 sodomy or rape by instrument in violation of Section 289.

39 (13) A violation of Section 269.

(14) An offense committed in another jurisdiction that has all the elements of an offense specified in paragraphs (1) to ~~(12)~~ (13), inclusive, of this subdivision.

(d) This section shall apply only if the defendant's status as a habitual sexual offender is alleged in the information, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by a plea of guilty or nolo contendere or by trial by court sitting without a jury.

~~SEC. 3.~~

*SEC. 4.* Section 1170.1 of the Penal Code is amended to read:

1170.1. (a) Except as provided in subdivisions (b) and (c), and subject to Section 654, when any person is convicted of two or more felonies, whether in the same proceeding or court or in different proceedings or courts, and whether by judgment rendered by the same or by a different court, and a consecutive term of imprisonment is imposed under Sections 669 and 1170, the aggregate term of imprisonment for all these convictions shall be the sum of the principal term, the subordinate term, and any additional term imposed for applicable enhancements for prior convictions, prior prison terms, and Section 12022.1. The principal term shall consist of the greatest term of imprisonment imposed by the court for any of the crimes, including any term imposed for applicable specific enhancements. The subordinate term for each consecutive offense which is not a "violent felony," as defined in subdivision (c) of Section 667.5, shall consist of one-third of the middle term of imprisonment prescribed for each other felony conviction for an offense that is not a violent felony for which a consecutive term of imprisonment is imposed, and shall exclude any specific enhancements. Except as otherwise provided by law, the total of subordinate terms for those consecutive offenses which are not "violent felonies," as defined in subdivision (c) of Section 667.5, shall not exceed five years. The subordinate term for each consecutive offense which is a "violent felony," as defined

1 in any paragraph of subdivision (c) of Section 667.5, shall  
2 consist of one-third of the middle term of imprisonment  
3 prescribed for each other felony conviction for an offense  
4 that is a violent felony for which a consecutive term of  
5 imprisonment is imposed, and shall include one-third of  
6 the term imposed for any specific enhancements  
7 applicable to those subordinate offenses.

8 (b) When a consecutive term of imprisonment is  
9 imposed under Sections 669 and 1170 for two or more  
10 convictions for kidnapping, as defined in Section 207,  
11 involving separate victims, the aggregate term shall be  
12 calculated as provided in subdivision (a), except that the  
13 subordinate term for each subsequent kidnapping  
14 conviction shall consist of the full middle term for each  
15 kidnapping conviction for which a consecutive term of  
16 imprisonment is imposed and shall include the full term  
17 imposed for specific enhancements applicable to those  
18 subordinate offenses. The total of the subordinate terms  
19 imposed pursuant to this subdivision may exceed five  
20 years.

21 (c) In the case of any person convicted of one or more  
22 felonies committed while the person is confined in a state  
23 prison or is subject to reimprisonment for escape from  
24 custody and the law either requires the terms to be served  
25 consecutively or the court imposes consecutive terms, the  
26 term of imprisonment for all the convictions which the  
27 person is required to serve consecutively shall commence  
28 from the time the person would otherwise have been  
29 released from prison. If the new offenses are consecutive  
30 with each other, the principal and subordinate terms shall  
31 be calculated as provided in subdivision (a), except that  
32 the total of subordinate terms may exceed five years. This  
33 subdivision shall be applicable in cases of convictions of  
34 more than one offense in different proceedings, and  
35 convictions of more than one offense in the same or  
36 different proceedings.

37 (d) When the court imposes a prison sentence for a  
38 felony pursuant to Section 1170, the court shall also  
39 impose the additional terms provided for any applicable  
40 enhancements. The court shall also impose any other

1 additional term that the court determines in its discretion  
2 or as required by law shall run consecutive to the term  
3 imposed under Section 1170. In considering the  
4 imposition of the additional term, the court shall apply  
5 the sentencing rules of the Judicial Council.

6 (e) All enhancements shall be alleged in the  
7 accusatory pleading and either admitted by the  
8 defendant in open court or found to be true by the trier  
9 of fact.

10 (f) When two or more enhancements may be imposed  
11 for being armed with or using a dangerous or deadly  
12 weapon or a firearm in the commission of a single offense,  
13 only the greatest of those enhancements shall be imposed  
14 for that offense. This subdivision shall not limit the  
15 imposition of any other enhancements applicable to that  
16 offense, including an enhancement for the infliction of  
17 great bodily injury.

18 (g) When two or more enhancements may be imposed  
19 for the infliction of great bodily injury in the commission  
20 of a single offense, only the greatest of those  
21 enhancements shall be imposed for that offense. This  
22 subdivision shall not limit the imposition of any other  
23 enhancements applicable to that offense, including an  
24 enhancement for being armed with or using a dangerous  
25 or deadly weapon or firearm.

26 (h) For any violation of paragraph (2), (3), or (6) of  
27 subdivision (a) of Section 261, paragraph (1) or (4) of  
28 subdivision (a) of Section 262, Section 264.1, subdivision  
29 (b) of Section 288, subdivision (a) of Section 289, or  
30 sodomy or oral copulation by force, violence, duress,  
31 menace, or fear of immediate and unlawful bodily injury  
32 on the victim or another person as provided in Section 286  
33 or 288a, the number of enhancements that may be  
34 imposed shall not be limited, regardless of whether the  
35 enhancements are pursuant to this section, Section 667.6,  
36 or some other section of law. Each of the enhancements  
37 shall be a full and separately served enhancement and  
38 shall not be merged with any term or with any other  
39 enhancement.

1 SEC. 4.5. Section 1170.1 of the Penal Code is amended  
2 to read:

3 1170.1. (a) Except as provided in subdivisions (b)  
4 and (c), and subject to Section 654, when any person is  
5 convicted of two or more felonies, whether in the same  
6 proceeding or court or in different proceedings or courts,  
7 and whether by judgment rendered by the same or by a  
8 different court, and a consecutive term of imprisonment  
9 is imposed under Sections 669 and 1170, the aggregate  
10 term of imprisonment for all these convictions shall be  
11 the sum of the principal term, the subordinate term, and  
12 any additional term imposed for applicable  
13 enhancements for prior convictions, prior prison terms,  
14 and Section 12022.1. The principal term shall consist of  
15 the greatest term of imprisonment imposed by the court  
16 for any of the crimes, including any term imposed for  
17 applicable specific enhancements. The subordinate term  
18 for each consecutive offense which is not a “violent  
19 felony,” as defined in subdivision (c) of Section 667.5,  
20 shall consist of one-third of the middle term of  
21 imprisonment prescribed for each other felony  
22 conviction for an offense that is not a violent felony for  
23 which a consecutive term of imprisonment is imposed,  
24 and shall exclude any specific enhancements. ~~Except as~~  
25 ~~otherwise provided by law, the total of subordinate terms~~  
26 ~~for those consecutive offenses which are not “violent~~  
27 ~~felonies,” as defined in subdivision (c) of Section 667.5,~~  
28 ~~shall not exceed five years.~~ The subordinate term for each  
29 consecutive offense which is a “violent felony,” as defined  
30 in any paragraph of subdivision (c) of Section 667.5, shall  
31 consist of one-third of the middle term of imprisonment  
32 prescribed for each other felony conviction for an offense  
33 that is a violent felony for which a consecutive term of  
34 imprisonment is imposed, and shall include one-third of  
35 the term imposed for any specific enhancements  
36 applicable to those subordinate offenses.

37 (b) When a consecutive term of imprisonment is  
38 imposed under Sections 669 and 1170 for two or more  
39 convictions for kidnapping, as defined in Section 207-~~or~~  
40 ~~208~~, involving separate victims, the aggregate term shall

1 be calculated as provided in subdivision (a), except that  
2 the subordinate term for each—~~subsequent~~ subordinate  
3 kidnapping conviction shall consist of the full middle  
4 term for each kidnapping conviction for which a  
5 consecutive term of imprisonment is imposed and shall  
6 include the full term imposed for specific enhancements  
7 applicable to those subordinate offenses. ~~The total of the~~  
8 ~~subordinate terms imposed pursuant to this subdivision~~  
9 ~~may exceed five years.~~

10 (c) In the case of any person convicted of one or more  
11 felonies committed while the person is confined in a state  
12 prison or is subject to reimprisonment for escape from  
13 custody and the law either requires the terms to be served  
14 consecutively or the court imposes consecutive terms, the  
15 term of imprisonment for all the convictions ~~which~~ that  
16 the person is required to serve consecutively shall  
17 commence from the time the person would otherwise  
18 have been released from prison. If the new offenses are  
19 consecutive with each other, the principal and  
20 subordinate terms shall be calculated as provided in  
21 subdivision (a), ~~except that the total of subordinate terms~~  
22 ~~may exceed five years.~~ This subdivision shall be  
23 applicable in cases of convictions of more than one  
24 offense in different proceedings, and convictions of more  
25 than one offense in the same or different proceedings.

26 (d) When the court imposes a prison sentence for a  
27 felony pursuant to Section 1170, the court shall also  
28 impose the additional terms provided for any applicable  
29 enhancements. The court shall also impose any other  
30 additional term that the court determines in its discretion  
31 or as required by law shall run consecutive to the term  
32 imposed under Section 1170. In considering the  
33 imposition of the additional term, the court shall apply  
34 the sentencing rules of the Judicial Council.

35 (e) All enhancements shall be alleged in the  
36 accusatory pleading and either admitted by the  
37 defendant in open court or found to be true by the trier  
38 of fact.

39 (f) When two or more enhancements may be imposed  
40 for being armed with or using a dangerous or deadly

1 weapon or a firearm in the commission of a single offense,  
2 only the greatest of those enhancements shall be imposed  
3 for that offense. This subdivision shall not limit the  
4 imposition of any other enhancements applicable to that  
5 offense, including an enhancement for the infliction of  
6 great bodily injury.

7 (g) When two or more enhancements may be imposed  
8 for the infliction of great bodily injury in the commission  
9 of a single offense, only the greatest of those  
10 enhancements shall be imposed for that offense. This  
11 subdivision shall not limit the imposition of any other  
12 enhancements applicable to that offense, including an  
13 enhancement for being armed with or using a dangerous  
14 or deadly weapon or firearm.

15 (h) For any violation of paragraph (2), (3), or (6) of  
16 subdivision (a) of Section 261, paragraph (1) or (4) of  
17 subdivision (a) of Section 262, Section 264.1, subdivision  
18 (b) of Section 288, subdivision (a) of Section 289, or  
19 sodomy or oral copulation by force, violence, duress,  
20 menace, or fear of immediate and unlawful bodily injury  
21 on the victim or another person as provided in Section 286  
22 or 288a, the number of enhancements that may be  
23 imposed shall not be limited, regardless of whether the  
24 enhancements are pursuant to this section, Section 667.6,  
25 or some other section of law. Each of the enhancements  
26 shall be a full and separately served enhancement and  
27 shall not be merged with any term or with any other  
28 enhancement.

29 ~~SEC. 4.~~

30 *SEC. 5.* Section 12022.53 of the Penal Code is  
31 amended to read:

32 12022.53. (a) This section applies to the following  
33 felonies:

34 (1) Section 187 (murder).

35 (2) Sections 203 and 205 (mayhem).

36 (3) Sections 207, 209, and 209.5 (kidnapping).

37 (4) Section 211 (robbery).

38 (5) Section 215 (carjacking).

39 (6) Section 220 (assault with intent to commit a  
40 specified felony).

- 1 (7) Subdivision (d) of Section 245 (assault with a  
2 firearm on a peace officer or firefighter).
- 3 (8) Sections 261 and 262 (rape).
- 4 (9) Section 264.1 (rape or penetration by a foreign  
5 object in concert).
- 6 (10) Section 286 (sodomy).
- 7 (11) Sections 288 and 288.5 (lewd act on a child).
- 8 (12) Section 288a (oral copulation).
- 9 (13) Section 289 (penetration by a foreign object).
- 10 (14) Section 4500 (assault by life prisoner).
- 11 (15) Section 4501 (assault by prisoner).
- 12 (16) Section 4503 (holding a hostage by prisoner).
- 13 (17) Any felony punishable by death or imprisonment  
14 in the state prison for life.
- 15 (18) Any attempt to commit a crime listed in this  
16 subdivision other than an assault.
- 17 (b) Notwithstanding any other provision of law, any  
18 person who is convicted of a felony specified in  
19 subdivision (a), and who in the commission of that felony  
20 personally used a firearm, shall be punished by a term of  
21 imprisonment of 10 years in the state prison, which shall  
22 be imposed in addition and consecutive to the  
23 punishment prescribed for that felony. The firearm need  
24 not be operable or loaded for this enhancement to apply.
- 25 (c) Notwithstanding any other provision of law, any  
26 person who is convicted of a felony specified in  
27 subdivision (a), and who in the commission of that felony  
28 intentionally and personally discharged a firearm, shall  
29 be punished by a term of imprisonment of 20 years in the  
30 state prison, which shall be imposed in addition and  
31 consecutive to the punishment prescribed for that felony.
- 32 (d) Notwithstanding any other provision of law, any  
33 person who is convicted of a felony specified in  
34 subdivision (a), Section 246, or subdivision (c) or (d) of  
35 Section 12034, and who in the commission of that felony  
36 intentionally and personally discharged a firearm and  
37 proximately caused great bodily injury, as defined in  
38 Section 12022.7, to any person other than an accomplice,  
39 shall be punished by a term of imprisonment of 25 years  
40 to life in the state prison, which shall be imposed in



1 addition and consecutive to the punishment prescribed  
2 for that felony.

3 (e) (1) The enhancements specified in this section  
4 shall apply to any person charged as a principal in the  
5 commission of an offense that includes an allegation  
6 pursuant to this section when a violation of both this  
7 section and subdivision (b) of Section 186.22 are pled and  
8 proved.

9 (2) An enhancement for participation in a criminal  
10 street gang pursuant to Chapter 11 (commencing with  
11 Section 186.20) of Title 7 of Part 1, shall not be imposed  
12 on a person in addition to an enhancement imposed  
13 pursuant to this subdivision, unless the person personally  
14 used or personally discharged a firearm in the  
15 commission of the offense.

16 (f) Only one additional term of imprisonment under  
17 this section shall be imposed per person for each crime.  
18 If more than one enhancement per person is found true  
19 under this section, the court shall impose upon that  
20 person the enhancement that provides the longest term  
21 of imprisonment. An enhancement involving a firearm  
22 specified in Section 12021.5, 12022, 12022.3, 12022.4,  
23 12022.5, or 12022.55 shall not be imposed on a person in  
24 addition to an enhancement imposed pursuant to this  
25 section. An enhancement for great bodily injury as  
26 defined in Section 12022.7, 12022.8, or 12022.9 shall not be  
27 imposed on a person in addition to an enhancement  
28 imposed pursuant to this section.

29 (g) Notwithstanding any other provision of law,  
30 probation shall not be granted to, nor shall the execution  
31 or imposition of sentence be suspended for, any person  
32 found to come within the provisions of this section.

33 (h) Notwithstanding Section 1385 or any other  
34 provision of law, the court shall not strike an allegation  
35 under this section or a finding bringing a person within  
36 the provisions of this section.

37 (i) The total amount of credits awarded pursuant to  
38 Article 2.5 (commencing with Section 2930) of Chapter  
39 7 of Title 1 of Part 3 or pursuant to Section 4019 or any  
40 other provision of law shall not exceed 15 percent of the

1 total term of imprisonment imposed on a defendant upon  
2 whom a sentence is imposed pursuant to this section.

3 (j) For the penalties in this section to apply, the  
4 existence of any fact required under subdivision (b), (c),  
5 or (d) shall be alleged in the information or indictment  
6 and either admitted by the defendant in open court or  
7 found to be true by the trier of fact. When an  
8 enhancement specified in this section has been admitted  
9 or found to be true, the court shall impose punishment  
10 pursuant to this section rather than imposing punishment  
11 authorized under any other provision of law, unless  
12 another provision of law provides for a greater penalty or  
13 a longer term of imprisonment.

14 (k) When a person is found to have used or discharged  
15 a firearm in the commission of an offense that includes an  
16 allegation pursuant to this section and the firearm is  
17 owned by that person, a coparticipant, or a coconspirator,  
18 the court shall order that the firearm be deemed a  
19 nuisance and disposed of in the manner provided in  
20 Section 12028.

21 (l) The enhancements specified in this section shall  
22 not apply to the lawful use or discharge of a firearm by a  
23 public officer, as provided in Section 196, or by any person  
24 in lawful self-defense, lawful defense of another, or lawful  
25 defense of property, as provided in Sections 197, 198, and  
26 198.5.

27 *SEC. 5.5. Section 12022.53 of the Penal Code is*  
28 *amended to read:*

29 12022.53. (a) This section applies to the following  
30 felonies:

31 (1) Section 187 (murder).

32 (2) Sections 203 and 205 (mayhem).

33 (3) Sections 207, ~~208~~, 209, and 209.5 (kidnapping).

34 (4) Section 211 (robbery).

35 (5) Section 215 (carjacking).

36 (6) Section 220 (assault with intent to commit a  
37 specified felony).

38 (7) Subdivision (d) of Section 245 (assault with a  
39 firearm on a peace officer or firefighter).

40 (8) Sections 261 and 262 (rape).

1 (9) Section 264.1 (rape or penetration by a foreign  
2 object in concert).

3 (10) Section 286 (sodomy).

4 (11) Sections 288 and 288.5 (lewd act on a child).

5 (12) Section 288a (oral copulation).

6 (13) Section 289 (penetration by a foreign object).

7 (14) *Subdivision (a) of Section 460 (first degree*  
8 *burglary).*

9 (15) Section 4500 (assault by life prisoner).

10 ~~(15)~~

11 (16) Section 4501 (assault by prisoner).

12 ~~(16)~~

13 (17) Section 4503 (holding a hostage by prisoner).

14 ~~(17)~~

15 (18) Any felony punishable by death or imprisonment  
16 in the state prison for life.

17 ~~(18)~~

18 (19) Any attempt to commit a crime listed in this  
19 subdivision other than an assault.

20 (b) Notwithstanding any other provision of law, any  
21 person who is convicted of a felony specified in  
22 subdivision (a), and who in the commission of that felony  
23 personally used a firearm, shall be punished by a term of  
24 imprisonment of 10 years in the state prison, which shall  
25 be imposed in addition and consecutive to the  
26 punishment prescribed for that felony. The firearm need  
27 not be operable or loaded for this enhancement to apply.

28 (c) Notwithstanding any other provision of law, any  
29 person who is convicted of a felony specified in  
30 subdivision (a), and who in the commission of that felony  
31 intentionally and personally discharged a firearm, shall  
32 be punished by a term of imprisonment of 20 years in the  
33 state prison, which shall be imposed in addition and  
34 consecutive to the punishment prescribed for that felony.

35 (d) Notwithstanding any other provision of law, any  
36 person who is convicted of a felony specified in  
37 subdivision (a), Section 246, or subdivision (c) or (d) of  
38 Section 12034, and who in the commission of that felony  
39 intentionally and personally discharged a firearm and  
40 proximately caused great bodily injury, as defined in

1 Section 12022.7, *or death*, to any person other than an  
2 accomplice, shall be punished by a term of imprisonment  
3 of 25 years to life in the state prison, which shall be  
4 imposed in addition and consecutive to the punishment  
5 prescribed for that felony.

6 (e) (1) The enhancements specified in this section  
7 shall apply to any person charged as a principal in the  
8 commission of an offense that includes an allegation  
9 pursuant to this section when a violation of both this  
10 section and subdivision (b) of Section 186.22 are pled and  
11 proved.

12 (2) An enhancement for participation in a criminal  
13 street gang pursuant to Chapter 11 (commencing with  
14 Section 186.20) of Title 7 of Part 1, shall not be imposed  
15 on a person in addition to an enhancement imposed  
16 pursuant to this subdivision, unless the person personally  
17 used or personally discharged a firearm in the  
18 commission of the offense.

19 (f) Only one additional term of imprisonment under  
20 this section shall be imposed per person for each crime.  
21 If more than one enhancement per person is found true  
22 under this section, the court shall impose upon that  
23 person the enhancement that provides the longest term  
24 of imprisonment. An enhancement involving a firearm  
25 specified in Section 12021.5, 12022, 12022.3, 12022.4,  
26 12022.5, or 12022.55 shall not be imposed on a person in  
27 addition to an enhancement imposed pursuant to this  
28 section. An enhancement for great bodily injury as  
29 defined in Section 12022.7, 12022.8, or 12022.9 shall not be  
30 imposed on a person in addition to an enhancement  
31 imposed pursuant to ~~this section~~ *subdivision (d)*.

32 (g) Notwithstanding any other provision of law,  
33 probation shall not be granted to, nor shall the execution  
34 or imposition of sentence be suspended for, any person  
35 found to come within the provisions of this section.

36 (h) Notwithstanding Section 1385 or any other  
37 provision of law, the court shall not strike an allegation  
38 under this section or a finding bringing a person within  
39 the provisions of this section.



(i) The total amount of credits awarded pursuant to Article 2.5 (commencing with Section 2930) of Chapter 7 of Title 1 of Part 3 or pursuant to Section 4019 or any other provision of law shall not exceed 15 percent of the total term of imprisonment imposed on a defendant upon whom a sentence is imposed pursuant to this section.

(j) For the penalties in this section to apply, the existence of any fact required under subdivision (b), (c), or (d) shall be alleged in the information or indictment and either admitted by the defendant in open court or found to be true by the trier of fact. When an enhancement specified in this section has been admitted or found to be true, the court shall impose punishment pursuant to this section rather than imposing punishment authorized under any other provision of law, unless another provision of law provides for a greater penalty or a longer term of imprisonment.

(k) When a person is found to have used or discharged a firearm in the commission of an offense that includes an allegation pursuant to this section and the firearm is owned by that person, a coparticipant, or a coconspirator, the court shall order that the firearm be deemed a nuisance and disposed of in the manner provided in Section 12028.

(l) The enhancements specified in this section shall not apply to the lawful use or discharge of a firearm by a public officer, as provided in Section 196, or by any person in lawful self-defense, lawful defense of another, or lawful defense of property, as provided in Sections 197, 198, and 198.5.

~~SEC. 5.~~

SEC. 6. Section 676 of the Welfare and Institutions Code is amended to read:

676. (a) Unless requested by the minor concerning whom the petition has been filed and any parent or guardian present, the public shall not be admitted to a juvenile court hearing. Nothing in this section shall preclude the attendance of up to two family members of a prosecuting witness for the support of that witness, as authorized by Section 868.5 of the Penal Code. The judge

1 or referee may nevertheless admit those persons he or she  
2 deems to have a direct and legitimate interest in the  
3 particular case or the work of the court. However, except  
4 as provided in subdivision (b), members of the public  
5 shall be admitted, on the same basis as they may be  
6 admitted to trials in a court of criminal jurisdiction, to  
7 hearings concerning petitions filed pursuant to Section  
8 602 alleging that a minor is a person described in Section  
9 602 by reason of the violation of any one of the following  
10 offenses:

- 11 (1) Murder.
- 12 (2) Arson of an inhabited building.
- 13 (3) Robbery while armed with a dangerous or deadly  
14 weapon.
- 15 (4) Rape with force or violence or threat of great  
16 bodily harm.
- 17 (5) Sodomy by force, violence, duress, menace, or  
18 threat of great bodily harm.
- 19 (6) Oral copulation by force, violence, duress, menace,  
20 or threat of great bodily harm.
- 21 (7) Any offense specified in subdivision (a) of Section  
22 289 of the Penal Code.
- 23 (8) Kidnapping for ransom.
- 24 (9) Kidnapping in violation of subdivision (b) of  
25 Section 209 of the Penal Code.
- 26 (10) Kidnapping with bodily harm.
- 27 (11) Assault with intent to murder or attempted  
28 murder.
- 29 (12) Assault with a firearm or destructive device.
- 30 (13) Assault by any means of force likely to produce  
31 great bodily injury.
- 32 (14) Discharge of a firearm into an inhabited or  
33 occupied building.
- 34 (15) Any offense described in Section 1203.09 of the  
35 Penal Code.
- 36 (16) Any offense described in Section 12022.5 of the  
37 Penal Code.
- 38 (17) Any felony offense in which a minor personally  
39 used a weapon listed in subdivision (a) of Section 12020  
40 of the Penal Code.



1 (18) Burglary of an inhabited dwelling house or trailer  
2 coach, as defined in Section 635 of the Vehicle Code, or  
3 the inhabited portion of any other building, if the minor  
4 previously has been adjudged a ward of the court by  
5 reason of the commission of any offense listed in this  
6 section, including an offense listed in this paragraph.

7 (19) Any felony offense described in Section 136.1 or  
8 137 of the Penal Code.

9 (20) Any offense as specified in Sections 11351, 11351.5,  
10 11352, 11378, 11378.5, 11379, and 11379.5 of the Health and  
11 Safety Code.

12 (21) Criminal street gang activity which constitutes a  
13 felony pursuant to Section 186.22 of the Penal Code.

14 (22) Manslaughter as specified in Section 192 of the  
15 Penal Code.

16 (23) Driveby shooting or discharge of a weapon from  
17 or at a motor vehicle as specified in Sections 246, 247, and  
18 12034 of the Penal Code.

19 (24) Any crime committed with an assault weapon, as  
20 defined in Section 12276 of the Penal Code, including  
21 possession of an assault weapon as specified in subdivision  
22 (b) of Section 12280 of the Penal Code.

23 (25) Carjacking, while armed with a dangerous or  
24 deadly weapon.

25 (26) Kidnapping, in violation of Section 209.5 of the  
26 Penal Code.

27 (27) Torture, as described in Sections 206 and 206.1 of  
28 the Penal Code.

29 (28) Aggravated mayhem, in violation of Section 205  
30 of the Penal Code.

31 (b) Where the petition filed alleges that the minor is  
32 a person described in Section 602 by reason of the  
33 commission of rape with force or violence or great bodily  
34 harm; sodomy by force, violence, duress, menace, or  
35 threat of great bodily harm; oral copulation by force,  
36 violence, duress, menace, or threat of great bodily harm;  
37 or any offense specified in Section 289 of the Penal Code,  
38 members of the public shall not be admitted to the  
39 hearing in either of the following instances:

1 (1) Upon a motion for a closed hearing by the district  
2 attorney, who shall make the motion if so requested by  
3 the victim.

4 (2) During the victim's testimony, if, at the time of the  
5 offense the victim was under 16 years of age.

6 (c) The name of a minor found to have committed one  
7 of the offenses listed in subdivision (a) shall not be  
8 confidential, unless the court, for good cause, so orders.

9 (d) Notwithstanding Sections 827 and 828 and subject  
10 to subdivisions (e) and (f), when a petition is sustained  
11 for any offense listed in subdivision (a), the charging  
12 petition, the minutes of the proceeding, and the orders of  
13 adjudication and disposition of the court that are  
14 contained in the court file shall be available for public  
15 inspection. Nothing in this subdivision shall be construed  
16 to authorize public access to any other documents in the  
17 court file.

18 (e) The probation officer or any party may petition the  
19 juvenile court to prohibit disclosure to the public of any  
20 file or record. The juvenile court shall prohibit the  
21 disclosure if it appears that the harm to the minor,  
22 victims, witnesses, or public from the public disclosure  
23 outweighs the benefit of public knowledge.

24 (f) Nothing in this section shall be applied to limit the  
25 disclosure of information as otherwise provided for by  
26 law.

27 *SEC. 6.5. Section 676 of the Welfare and Institutions*  
28 *Code is amended to read:*

29 676. (a) Unless requested by the minor concerning  
30 whom the petition has been filed and any parent or  
31 guardian present, the public shall not be admitted to a  
32 juvenile court hearing. Nothing in this section shall  
33 preclude the attendance of up to two family members of  
34 a prosecuting witness for the support of that witness, as  
35 authorized by Section 868.5 of the Penal Code. The judge  
36 or referee may nevertheless admit those persons he or she  
37 deems to have a direct and legitimate interest in the  
38 particular case or the work of the court. However, except  
39 as provided in subdivision (b), members of the public  
40 shall be admitted, on the same basis as they may be



1 admitted to trials in a court of criminal jurisdiction, to  
2 hearings concerning petitions filed pursuant to Section  
3 602 alleging that a minor is a person described in Section  
4 602 by reason of the violation of any one of the following  
5 offenses:

6 (1) Murder.

7 (2) Arson of an inhabited building.

8 (3) Robbery while armed with a dangerous or deadly  
9 weapon.

10 (4) Rape with force or violence or threat of great  
11 bodily harm.

12 (5) Sodomy by force, violence, duress, menace, or  
13 threat of great bodily harm.

14 (6) Oral copulation by force, violence, duress, menace,  
15 or threat of great bodily harm.

16 (7) Any offense specified in subdivision (a) of Section  
17 289 of the Penal Code.

18 (8) Kidnapping for ransom.

19 (9) Kidnapping ~~for purpose of robbery~~ *in violation of*  
20 *subdivision (b) of Section 209 of the Penal Code.*

21 (10) Kidnapping with bodily harm.

22 (11) Assault with intent to murder or attempted  
23 murder.

24 (12) Assault with a firearm or destructive device.

25 (13) Assault by any means of force likely to produce  
26 great bodily injury.

27 (14) Discharge of a firearm into an inhabited or  
28 occupied building.

29 (15) Any offense described in Section 1203.09 of the  
30 Penal Code.

31 (16) Any offense described in Section 12022.5 *or*  
32 *12022.53* of the Penal Code.

33 (17) Any felony offense in which a minor personally  
34 used a weapon listed in subdivision (a) of Section 12020  
35 of the Penal Code.

36 (18) Burglary of an inhabited dwelling house or trailer  
37 coach, as defined in Section 635 of the Vehicle Code, or  
38 the inhabited portion of any other building, if the minor  
39 previously has been adjudged a ward of the court by

1 reason of the commission of any offense listed in this  
2 section, including an offense listed in this paragraph.

3 (19) Any felony offense described in Section 136.1 or  
4 137 of the Penal Code.

5 (20) Any offense as specified in Sections 11351, 11351.5,  
6 11352, 11378, 11378.5, 11379, and 11379.5 of the Health and  
7 Safety Code.

8 (21) Criminal street gang activity which constitutes a  
9 felony pursuant to Section 186.22 of the Penal Code.

10 (22) Manslaughter as specified in Section 192 of the  
11 Penal Code.

12 (23) Driveby shooting or discharge of a weapon from  
13 or at a motor vehicle as specified in Sections 246, 247, and  
14 12034 of the Penal Code.

15 (24) Any crime committed with an assault weapon, as  
16 defined in Section 12276 of the Penal Code, including  
17 possession of an assault weapon as specified in subdivision  
18 (b) of Section 12280 of the Penal Code.

19 (25) Carjacking, while armed with a dangerous or  
20 deadly weapon.

21 (26) Kidnapping, in violation of Section 209.5 of the  
22 Penal Code.

23 (27) Torture, as described in Sections 206 and 206.1 of  
24 the Penal Code.

25 (28) Aggravated mayhem, in violation of Section 205  
26 of the Penal Code.

27 (b) Where the petition filed alleges that the minor is  
28 a person described in Section 602 by reason of the  
29 commission of rape with force or violence or great bodily  
30 harm; sodomy by force, violence, duress, menace, or  
31 threat of great bodily harm; oral copulation by force,  
32 violence, duress, menace, or threat of great bodily harm;  
33 or any offense specified in Section 289 of the Penal Code,  
34 members of the public shall not be admitted to the  
35 hearing in either of the following instances:

36 (1) Upon a motion for a closed hearing by the district  
37 attorney, who shall make the motion if so requested by  
38 the victim.

39 (2) During the victim's testimony, if, at the time of the  
40 offense, the victim was under 16 years of age.

1 (c) The name of a minor found to have committed one  
2 of the offenses listed in subdivision (a) shall not be  
3 confidential, unless the court, for good cause, so orders.

4 (d) Notwithstanding Sections 827 and 828 and subject  
5 to subdivisions (e) and (f), when a petition is sustained  
6 for any offense listed in subdivision (a), the charging  
7 petition, the minutes of the proceeding, and the orders of  
8 adjudication and disposition of the court that are  
9 contained in the court file shall be available for public  
10 inspection. Nothing in this subdivision shall be construed  
11 to authorize public access to any other documents in the  
12 court file.

13 (e) The probation officer or any party may petition the  
14 juvenile court to prohibit disclosure to the public of any  
15 file or record. The juvenile court shall prohibit the  
16 disclosure if it appears that the harm to the minor,  
17 victims, witnesses, or public from the public disclosure  
18 outweighs the benefit of public knowledge.

19 (f) Nothing in this section shall be applied to limit the  
20 disclosure of information as otherwise provided for by  
21 law.

22 ~~SEC. 6.~~

23 *SEC. 7.* Section 707 of the Welfare and Institutions  
24 Code is amended to read:

25 707. (a) In any case in which a minor is alleged to be  
26 a person described in Section 602 by reason of the  
27 violation, when he or she was 16 years of age or older, of  
28 any criminal statute or ordinance except those listed in  
29 subdivision (b), upon motion of the petitioner made prior  
30 to the attachment of jeopardy the court shall cause the  
31 probation officer to investigate and submit a report on the  
32 behavioral patterns and social history of the minor being  
33 considered for a determination of unfitness. Following  
34 submission and consideration of the report, and of any  
35 other relevant evidence which the petitioner or the  
36 minor may wish to submit, the juvenile court may find  
37 that the minor is not a fit and proper subject to be dealt  
38 with under the juvenile court law if it concludes that the  
39 minor would not be amenable to the care, treatment, and  
40 training program available through the facilities of the

1 juvenile court, based upon an evaluation of the following  
2 criteria:

3 (1) The degree of criminal sophistication exhibited by  
4 the minor.

5 (2) Whether the minor can be rehabilitated prior to  
6 the expiration of the juvenile court's jurisdiction.

7 (3) The minor's previous delinquent history.

8 (4) Success of previous attempts by the juvenile court  
9 to rehabilitate the minor.

10 (5) The circumstances and gravity of the offense  
11 alleged in the petition to have been committed by the  
12 minor.

13 A determination that the minor is not a fit and proper  
14 subject to be dealt with under the juvenile court law may  
15 be based on any one or a combination of the factors set  
16 forth above, which shall be recited in the order of  
17 unfitness. In any case in which a hearing has been noticed  
18 pursuant to this section, the court shall postpone the  
19 taking of a plea to the petition until the conclusion of the  
20 fitness hearing, and no plea which may already have been  
21 entered shall constitute evidence at the hearing.

22 (b) Subdivision (c) shall be applicable in any case in  
23 which a minor is alleged to be a person described in  
24 Section 602 by reason of the violation, when he or she was  
25 16 years of age or older, of one of the following offenses:

26 (1) Murder.

27 (2) Arson, as provided in subdivision (a) or (b) of  
28 Section 451 of the Penal Code.

29 (3) Robbery while armed with a dangerous or deadly  
30 weapon.

31 (4) Rape with force or violence or threat of great  
32 bodily harm.

33 (5) Sodomy by force, violence, duress, menace, or  
34 threat of great bodily harm.

35 (6) Lewd or lascivious act as provided in subdivision  
36 (b) of Section 288 of the Penal Code.

37 (7) Oral copulation by force, violence, duress, menace,  
38 or threat of great bodily harm.

39 (8) Any offense specified in subdivision (a) of Section  
40 289 of the Penal Code.

- 1 (9) Kidnapping for ransom.
- 2 (10) Kidnapping in violation of subdivision (b) of
- 3 Section 209 of the Penal Code.
- 4 (11) Kidnapping with bodily harm.
- 5 (12) Attempted murder.
- 6 (13) Assault with a firearm or destructive device.
- 7 (14) Assault by any means of force likely to produce
- 8 great bodily injury.
- 9 (15) Discharge of a firearm into an inhabited or
- 10 occupied building.
- 11 (16) Any offense described in Section 1203.09 of the
- 12 Penal Code.
- 13 (17) Any offense described in Section 12022.5 of the
- 14 Penal Code.
- 15 (18) Any felony offense in which the minor personally
- 16 used a weapon listed in subdivision (a) of Section 12020
- 17 of the Penal Code.
- 18 (19) Any felony offense described in Section 136.1 or
- 19 137 of the Penal Code.
- 20 (20) Manufacturing, compounding, or selling one-half
- 21 ounce or more of any salt or solution of a controlled
- 22 substance specified in subdivision (e) of Section 11055 of
- 23 the Health and Safety Code.
- 24 (21) Any violent felony, as defined in subdivision (c)
- 25 of Section 667.5 of the Penal Code, which would also
- 26 constitute a felony violation of subdivision (b) of Section
- 27 186.22 of the Penal Code.
- 28 (22) Escape, by the use of force or violence, from any
- 29 county juvenile hall, home, ranch, camp, or forestry camp
- 30 in violation of subdivision (b) of Section 871 where great
- 31 bodily injury is intentionally inflicted upon an employee
- 32 of the juvenile facility during the commission of the
- 33 escape.
- 34 (23) Torture as described in Sections 206 and 206.1 of
- 35 the Penal Code.
- 36 (24) Aggravated mayhem, as described in Section 205
- 37 of the Penal Code.
- 38 (25) Carjacking, as described in Section 215 of the
- 39 Penal Code, while armed with a dangerous or deadly
- 40 weapon.

1 (26) Kidnapping, as punishable in Section 209.5 of the  
2 Penal Code.

3 (27) The offense described in subdivision (c) of  
4 Section 12034 of the Penal Code.

5 (28) The offense described in Section 12308 of the  
6 Penal Code.

7 (c) With regard to a minor alleged to be a person  
8 described in Section 602 by reason of the violation, when  
9 he or she was 16 years of age or older, of any of the offenses  
10 listed in subdivision (b), upon motion of the petitioner  
11 made prior to the attachment of jeopardy the court shall  
12 cause the probation officer to investigate and submit a  
13 report on the behavioral patterns and social history of the  
14 minor being considered for a determination of unfitness.  
15 Following submission and consideration of the report,  
16 and of any other relevant evidence which the petitioner  
17 or the minor may wish to submit the minor shall be  
18 presumed to be not a fit and proper subject to be dealt  
19 with under the juvenile court law unless the juvenile  
20 court concludes, based upon evidence, which evidence  
21 may be of extenuating or mitigating circumstances, that  
22 the minor would be amenable to the care, treatment, and  
23 training program available through the facilities of the  
24 juvenile court based upon an evaluation of each of the  
25 following criteria:

26 (1) The degree of criminal sophistication exhibited by  
27 the minor.

28 (2) Whether the minor can be rehabilitated prior to  
29 the expiration of the juvenile court's jurisdiction.

30 (3) The minor's previous delinquent history.

31 (4) Success of previous attempts by the juvenile court  
32 to rehabilitate the minor.

33 (5) The circumstances and gravity of the offenses  
34 alleged in the petition to have been committed by the  
35 minor.

36 A determination that the minor is a fit and proper  
37 subject to be dealt with under the juvenile court law shall  
38 be based on a finding of amenability after consideration  
39 of the criteria set forth above, and findings therefor  
40 recited in the order as to each of the above criteria that

1 the minor is fit and proper under each and every one of  
2 the above criteria. In making a finding of fitness, the court  
3 may consider extenuating or mitigating circumstances in  
4 evaluating each of the above criteria. In any case in which  
5 a hearing has been noticed pursuant to this section, the  
6 court shall postpone the taking of a plea to the petition  
7 until the conclusion of the fitness hearing and no plea  
8 which may already have been entered shall constitute  
9 evidence at the hearing.

10 (d) (1) In any case in which a minor is alleged to be  
11 a person described in Section 602 by reason of the  
12 violation, when he or she had attained the age of 14 years  
13 but had not attained the age of 16 years, of any of the  
14 offenses set forth in paragraph (2), upon motion of the  
15 petitioner made prior to the attachment of jeopardy the  
16 court shall cause the probation officer to investigate and  
17 submit a report on the behavioral patterns and social  
18 history of the minor being considered for a determination  
19 of unfitness. Following submission and consideration of  
20 the report, and of any other relevant evidence that the  
21 petitioner or the minor may wish to submit, the juvenile  
22 court may find that the minor is not a fit and proper  
23 subject to be dealt with under the juvenile court law if it  
24 concludes that the minor would not be amenable to the  
25 care, treatment, and training program available through  
26 the facilities of the juvenile court, based upon an  
27 evaluation of the following criteria:

28 (A) The degree of criminal sophistication exhibited by  
29 the minor.

30 (B) Whether the minor can be rehabilitated prior to  
31 the expiration of the juvenile court's jurisdiction.

32 (C) The minor's previous delinquent history.

33 (D) Success of previous attempts by the juvenile court  
34 to rehabilitate the minor.

35 (E) The circumstances and gravity of the offense  
36 alleged in the petition to have been committed by the  
37 minor.

38 A determination that the minor is not a fit and proper  
39 subject to be dealt with under the juvenile court law may  
40 be based on any one or a combination of the factors set

1 forth above, which shall be recited in the order of  
2 unfitness. In any case in which a hearing has been noticed  
3 pursuant to this subdivision, the court shall postpone the  
4 taking of a plea to the petition until the conclusion of the  
5 fitness hearing, and no plea that may already have been  
6 entered shall constitute evidence at the hearing.

7 (2) Paragraph (1) shall be applicable in any case in  
8 which a minor is alleged to be a person described in  
9 Section 602 by reason of the violation, when he or she had  
10 attained the age of 14 years but had not attained the age  
11 of 16 years, of one of the following offenses:

12 (A) Murder.

13 (B) Robbery in which the minor personally used a  
14 firearm.

15 (C) Rape with force or violence or threat of great  
16 bodily harm.

17 (D) Sodomy by force, violence, duress, menace, or  
18 threat of great bodily harm.

19 (E) Oral copulation by force, violence, duress,  
20 menace, or threat of great bodily harm.

21 (F) The offense specified in subdivision (a) of Section  
22 289 of the Penal Code.

23 (G) Kidnapping for ransom.

24 (H) Kidnapping in violation of subdivision (b) of  
25 Section 209 of the Penal Code.

26 (I) Kidnapping with bodily harm.

27 (J) Kidnapping, in violation of Section 209.5 of the  
28 Penal Code.

29 (K) The offense described in subdivision (c) of Section  
30 12034 of the Penal Code, in which the minor personally  
31 used a firearm.

32 (L) Personally discharging a firearm into an inhabited  
33 or occupied building.

34 (M) Manufacturing, compounding, or selling one-half  
35 ounce or more of any salt or solution of a controlled  
36 substance specified in subdivision (e) of Section 11055 of  
37 the Health and Safety Code.

38 (N) Escape, by the use of force or violence, from any  
39 county juvenile hall, home, ranch, camp, or forestry camp  
40 in violation of subdivision (b) of Section 871 where great



1 bodily injury is intentionally inflicted upon an employee  
2 of the juvenile facility during the commission of the  
3 escape.

4 (O) Torture, as described in Section 206 of the Penal  
5 Code.

6 (P) Aggravated mayhem, as described in Section 205  
7 of the Penal Code.

8 (Q) Assault with a firearm in which the minor  
9 personally used the firearm.

10 (R) Attempted murder.

11 (S) Rape in which the minor personally used a firearm.

12 (T) Burglary in which the minor personally used a  
13 firearm.

14 (U) Kidnapping in which the minor personally used a  
15 firearm.

16 (V) The offense described in Section 12308 of the  
17 Penal Code.

18 (W) Carjacking, in which the minor personally used a  
19 firearm.

20 (e) This subdivision shall apply to a minor alleged to be  
21 a person described in Section 602 by reason of the  
22 violation, when he or she had attained the age of 14 years  
23 but had not attained the age of 16 years, of the offense of  
24 murder in which it is alleged in the petition that one of  
25 the following exists:

26 (1) In the case of murder in the first or second degree,  
27 the minor personally killed the victim.

28 (2) In the case of murder in the first or second degree,  
29 the minor, acting with the intent to kill the victim, aided,  
30 abetted, counseled, commanded, induced, solicited,  
31 requested, or assisted any person to kill the victim.

32 (3) In the case of murder in the first degree, while not  
33 the actual killer, the minor, acting with reckless  
34 indifference to human life and as a major participant in  
35 a felony enumerated in paragraph (17) of subdivision (a)  
36 of Section 190.2 of the Penal Code, or an attempt to  
37 commit that felony, aided, abetted, counseled,  
38 commanded, induced, solicited, requested, or assisted in  
39 the commission or attempted commission of that felony  
40 and the commission or attempted commission of that

1 felony or the immediate flight therefrom resulted in the  
2 death of the victim.

3 Upon motion of the petitioner made prior to the  
4 attachment of jeopardy, the court shall cause the  
5 probation officer to investigate and submit a report on the  
6 behavioral patterns and social history of the minor being  
7 considered for a determination of unfitness. Following  
8 submission and consideration of the report, and of any  
9 other relevant evidence which the petitioner or the  
10 minor may wish to submit, the minor shall be presumed  
11 to be not a fit and proper subject to be dealt with under  
12 the juvenile court law unless the juvenile court concludes,  
13 based upon evidence, which evidence may be of  
14 extenuating or mitigating circumstances, that the minor  
15 would be amenable to the care, treatment, and training  
16 program available through the facilities of the juvenile  
17 court based upon an evaluation of each of the following  
18 criteria:

19 (A) The degree of criminal sophistication exhibited by  
20 the minor.

21 (B) Whether the minor can be rehabilitated prior to  
22 the expiration of the juvenile court's jurisdiction.

23 (C) The minor's previous delinquent history.

24 (D) Success of previous attempts by the juvenile court  
25 to rehabilitate the minor.

26 (E) The circumstances and gravity of the offenses  
27 alleged in the petition to have been committed by the  
28 minor.

29 A determination that the minor is a fit and proper  
30 subject to be dealt with under the juvenile court law shall  
31 be based on a finding of amenability after consideration  
32 of the criteria set forth above, and findings therefor  
33 recited in the order as to each of the above criteria that  
34 the minor is fit and proper under each and every one of  
35 the above criteria. In making a finding of fitness, the court  
36 may consider extenuating or mitigating circumstances in  
37 evaluating each of the above criteria. In any case in which  
38 a hearing has been noticed pursuant to this section, the  
39 court shall postpone the taking of a plea to the petition  
40 until the conclusion of the fitness hearing and no plea

1 which may already have been entered shall constitute  
2 evidence at the hearing.

3 (f) Any report submitted by a probation officer  
4 pursuant to this section regarding the behavioral patterns  
5 and social history of the minor being considered for a  
6 determination of unfitness shall include any written or  
7 oral statement offered by the victim, the victim's parent  
8 or guardian if the victim is a minor, or if the victim has  
9 died, the victim's next of kin, as authorized by subdivision  
10 (b) of Section 656.2. Victims' statements shall be  
11 considered by the court to the extent they are relevant to  
12 the court's determination of unfitness.

13 *SEC. 7.5. Section 707 of the Welfare and Institutions*  
14 *Code is amended to read:*

15 707. (a) In any case in which a minor is alleged to be  
16 a person described in Section 602 by reason of the  
17 violation, when he or she was 16 years of age or older, of  
18 any criminal statute or ordinance except those listed in  
19 subdivision (b), upon motion of the petitioner made prior  
20 to the attachment of jeopardy the court shall cause the  
21 probation officer to investigate and submit a report on the  
22 behavioral patterns and social history of the minor being  
23 considered for a determination of unfitness. Following  
24 submission and consideration of the report, and of any  
25 other relevant evidence which the petitioner or the  
26 minor may wish to submit, the juvenile court may find  
27 that the minor is not a fit and proper subject to be dealt  
28 with under the juvenile court law if it concludes that the  
29 minor would not be amenable to the care, treatment, and  
30 training program available through the facilities of the  
31 juvenile court, based upon an evaluation of the following  
32 criteria:

33 (1) The degree of criminal sophistication exhibited by  
34 the minor.

35 (2) Whether the minor can be rehabilitated prior to  
36 the expiration of the juvenile court's jurisdiction.

37 (3) The minor's previous delinquent history.

38 (4) Success of previous attempts by the juvenile court  
39 to rehabilitate the minor.

1 (5) The circumstances and gravity of the offense  
2 alleged in the petition to have been committed by the  
3 minor.

4 A determination that the minor is not a fit and proper  
5 subject to be dealt with under the juvenile court law may  
6 be based on any one or a combination of the factors set  
7 forth above, which shall be recited in the order of  
8 unfitness. In any case in which a hearing has been noticed  
9 pursuant to this section, the court shall postpone the  
10 taking of a plea to the petition until the conclusion of the  
11 fitness hearing, and no plea which may already have been  
12 entered shall constitute evidence at the hearing.

13 (b) Subdivision (c) shall be applicable in any case in  
14 which a minor is alleged to be a person described in  
15 Section 602 by reason of the violation, when he or she was  
16 16 years of age or older, of one of the following offenses:

17 (1) Murder.

18 (2) Arson, as provided in subdivision (a) or (b) of  
19 Section 451 of the Penal Code.

20 (3) Robbery while armed with a dangerous or deadly  
21 weapon.

22 (4) Rape with force or violence or threat of great  
23 bodily harm.

24 (5) Sodomy by force, violence, duress, menace, or  
25 threat of great bodily harm.

26 (6) Lewd or lascivious act as provided in subdivision  
27 (b) of Section 288 of the Penal Code.

28 (7) Oral copulation by force, violence, duress, menace,  
29 or threat of great bodily harm.

30 (8) Any offense specified in subdivision (a) of Section  
31 289 of the Penal Code.

32 (9) Kidnapping for ransom.

33 (10) Kidnapping ~~for purpose of robbery~~ in violation of  
34 *subdivision (b) of Section 209 of the Penal Code.*

35 (11) Kidnapping with bodily harm.

36 (12) Attempted murder.

37 (13) Assault with a firearm or destructive device.

38 (14) Assault by any means of force likely to produce  
39 great bodily injury.

1 (15) Discharge of a firearm into an inhabited or  
2 occupied building.

3 (16) Any offense described in Section 1203.09 of the  
4 Penal Code.

5 (17) Any offense described in Section 12022.5 *or*  
6 12022.53 of the Penal Code.

7 (18) Any felony offense in which the minor personally  
8 used a weapon listed in subdivision (a) of Section 12020  
9 of the Penal Code.

10 (19) Any felony offense described in Section 136.1 or  
11 137 of the Penal Code.

12 (20) Manufacturing, compounding, or selling one-half  
13 ounce or more of any salt or solution of a controlled  
14 substance specified in subdivision (e) of Section 11055 of  
15 the Health and Safety Code.

16 (21) Any violent felony, as defined in subdivision (c)  
17 of Section 667.5 of the Penal Code, which would also  
18 constitute a felony violation of subdivision (b) of Section  
19 186.22 of the Penal Code.

20 (22) Escape, by the use of force or violence, from any  
21 county juvenile hall, home, ranch, camp, or forestry camp  
22 in violation of subdivision (b) of Section 871 where great  
23 bodily injury is intentionally inflicted upon an employee  
24 of the juvenile facility during the commission of the  
25 escape.

26 (23) Torture, as described in Sections 206 and 206.1 of  
27 the Penal Code.

28 (24) Aggravated mayhem, as described in Section 205  
29 of the Penal Code.

30 (25) Carjacking, as described in Section 215 of the  
31 Penal Code, while armed with a dangerous or deadly  
32 weapon.

33 ~~(26) Kidnapping, as punishable in subdivision (d) of~~  
34 ~~Section 208 of the Penal Code.~~

35 ~~(27)~~ Kidnapping, as punishable in Section 209.5 of the  
36 Penal Code.

37 ~~(28)~~

38 (27) The offense described in subdivision (c) of  
39 Section 12034 of the Penal Code.

40 ~~(29)~~

1 (28) The offense described in Section 12308 of the  
2 Penal Code.

3 (c) With regard to a minor alleged to be a person  
4 described in Section 602 by reason of the violation, when  
5 he or she was 16 years of age or older, of any of the offenses  
6 listed in subdivision (b), upon motion of the petitioner  
7 made prior to the attachment of jeopardy the court shall  
8 cause the probation officer to investigate and submit a  
9 report on the behavioral patterns and social history of the  
10 minor being considered for a determination of unfitness.  
11 Following submission and consideration of the report,  
12 and of any other relevant evidence which the petitioner  
13 or the minor may wish to submit the minor shall be  
14 presumed to be not a fit and proper subject to be dealt  
15 with under the juvenile court law unless the juvenile  
16 court concludes, based upon evidence, which evidence  
17 may be of extenuating or mitigating circumstances, that  
18 the minor would be amenable to the care, treatment, and  
19 training program available through the facilities of the  
20 juvenile court based upon an evaluation of each of the  
21 following criteria:

22 (1) The degree of criminal sophistication exhibited by  
23 the minor.

24 (2) Whether the minor can be rehabilitated prior to  
25 the expiration of the juvenile court's jurisdiction.

26 (3) The minor's previous delinquent history.

27 (4) Success of previous attempts by the juvenile court  
28 to rehabilitate the minor.

29 (5) The circumstances and gravity of the offenses  
30 alleged in the petition to have been committed by the  
31 minor.

32 A determination that the minor is a fit and proper  
33 subject to be dealt with under the juvenile court law shall  
34 be based on a finding of amenability after consideration  
35 of the criteria set forth above, and findings therefor  
36 recited in the order as to each of the above criteria that  
37 the minor is fit and proper under each and every one of  
38 the above criteria. In making a finding of fitness, the court  
39 may consider extenuating or mitigating circumstances in  
40 evaluating each of the above criteria. In any case in which

1 a hearing has been noticed pursuant to this section, the  
2 court shall postpone the taking of a plea to the petition  
3 until the conclusion of the fitness hearing and no plea  
4 which may already have been entered shall constitute  
5 evidence at the hearing.

6 (d) (1) In any case in which a minor is alleged to be  
7 a person described in Section 602 by reason of the  
8 violation, when he or she had attained the age of 14 years  
9 but had not attained the age of 16 years, of any of the  
10 offenses set forth in paragraph (2), upon motion of the  
11 petitioner made prior to the attachment of jeopardy the  
12 court shall cause the probation officer to investigate and  
13 submit a report on the behavioral patterns and social  
14 history of the minor being considered for a determination  
15 of unfitness. Following submission and consideration of  
16 the report, and of any other relevant evidence that the  
17 petitioner or the minor may wish to submit, the juvenile  
18 court may find that the minor is not a fit and proper  
19 subject to be dealt with under the juvenile court law if it  
20 concludes that the minor would not be amenable to the  
21 care, treatment, and training program available through  
22 the facilities of the juvenile court, based upon an  
23 evaluation of the following criteria:

24 (A) The degree of criminal sophistication exhibited by  
25 the minor.

26 (B) Whether the minor can be rehabilitated prior to  
27 the expiration of the juvenile court's jurisdiction.

28 (C) The minor's previous delinquent history.

29 (D) Success of previous attempts by the juvenile court  
30 to rehabilitate the minor.

31 (E) The circumstances and gravity of the offense  
32 alleged in the petition to have been committed by the  
33 minor.

34 A determination that the minor is not a fit and proper  
35 subject to be dealt with under the juvenile court law may  
36 be based on any one or a combination of the factors set  
37 forth above, which shall be recited in the order of  
38 unfitness. In any case in which a hearing has been noticed  
39 pursuant to this subdivision, the court shall postpone the  
40 taking of a plea to the petition until the conclusion of the

1 fitness hearing, and no plea that may already have been  
2 entered shall constitute evidence at the hearing.

3 (2) Paragraph (1) shall be applicable in any case in  
4 which a minor is alleged to be a person described in  
5 Section 602 by reason of the violation, when he or she had  
6 attained the age of 14 years but had not attained the age  
7 of 16 years, of one of the following offenses:

8 (A) Murder.

9 (B) Robbery in which the minor personally used a  
10 firearm.

11 (C) Rape with force or violence or threat of great  
12 bodily harm.

13 (D) Sodomy by force, violence, duress, menace, or  
14 threat of great bodily harm.

15 (E) Oral copulation by force, violence, duress,  
16 menace, or threat of great bodily harm.

17 (F) The offense specified in subdivision (a) of Section  
18 289 of the Penal Code.

19 (G) Kidnapping for ransom.

20 (H) Kidnapping ~~for purpose of robbery~~ in violation of  
21 *subdivision (b) of Section 209 of the Penal Code.*

22 (I) Kidnapping with bodily harm.

23 (J) Kidnapping, ~~as punishable in subdivision (d) in~~  
24 *violation of Section 208 209.5 of the Penal Code.*

25 (K) The offense described in subdivision (c) of Section  
26 12034 of the Penal Code, in which the minor personally  
27 used a firearm.

28 (L) Personally discharging a firearm into an inhabited  
29 or occupied building.

30 (M) Manufacturing, compounding, or selling one-half  
31 ounce or more of any salt or solution of a controlled  
32 substance specified in subdivision (e) of Section 11055 of  
33 the Health and Safety Code.

34 (N) Escape, by the use of force or violence, from any  
35 county juvenile hall, home, ranch, camp, or forestry camp  
36 in violation of subdivision (b) of Section 871 where great  
37 bodily injury is intentionally inflicted upon an employee  
38 of the juvenile facility during the commission of the  
39 escape.



1 (O) Torture, as described in Section 206 of the Penal  
2 Code.

3 (P) Aggravated mayhem, as described in Section 205  
4 of the Penal Code.

5 (Q) Assault with a firearm in which the minor  
6 personally used the firearm.

7 (R) Attempted murder.

8 (S) Rape in which the minor personally used a firearm.

9 (T) Burglary in which the minor personally used a  
10 firearm.

11 (U) Kidnapping in which the minor personally used a  
12 firearm.

13 (V) The offense described in Section 12308 of the  
14 Penal Code.

15 ~~(W) Kidnapping, in violation of Section 209.5 of the~~  
16 ~~Penal Code.~~

17 ~~(X) Carjacking, in which the minor personally used a~~  
18 ~~firearm.~~

19 (e) This subdivision shall apply to a minor alleged to be  
20 a person described in Section 602 by reason of the  
21 violation, when he or she had attained the age of 14 years  
22 but had not attained the age of 16 years, of the offense of  
23 murder in which it is alleged in the petition that one of  
24 the following exists:

25 (1) In the case of murder in the first or second degree,  
26 the minor personally killed the victim.

27 (2) In the case of murder in the first or second degree,  
28 the minor, acting with the intent to kill the victim, aided,  
29 abetted, counseled, commanded, induced, solicited,  
30 requested, or assisted any person to kill the victim.

31 (3) In the case of murder in the first degree, while not  
32 the actual killer, the minor, acting with reckless  
33 indifference to human life and as a major participant in  
34 a felony enumerated in paragraph (17) of subdivision (a)  
35 of Section 190.2 of the Penal Code, or an attempt to  
36 commit that felony, aided, abetted, counseled,  
37 commanded, induced, solicited, requested, or assisted in  
38 the commission or attempted commission of that felony  
39 and the commission or attempted commission of that

1 felony or the immediate flight therefrom resulted in the  
2 death of the victim.

3 Upon motion of the petitioner made prior to the  
4 attachment of jeopardy, the court shall cause the  
5 probation officer to investigate and submit a report on the  
6 behavioral patterns and social history of the minor being  
7 considered for a determination of unfitness. Following  
8 submission and consideration of the report, and of any  
9 other relevant evidence which the petitioner or the  
10 minor may wish to submit, the minor shall be presumed  
11 to be not a fit and proper subject to be dealt with under  
12 the juvenile court law unless the juvenile court concludes,  
13 based upon evidence, which evidence may be of  
14 extenuating or mitigating circumstances, that the minor  
15 would be amenable to the care, treatment, and training  
16 program available through the facilities of the juvenile  
17 court based upon an evaluation of each of the following  
18 criteria:

19 (A) The degree of criminal sophistication exhibited by  
20 the minor.

21 (B) Whether the minor can be rehabilitated prior to  
22 the expiration of the juvenile court's jurisdiction.

23 (C) The minor's previous delinquent history.

24 (D) Success of previous attempts by the juvenile court  
25 to rehabilitate the minor.

26 (E) The circumstances and gravity of the offenses  
27 alleged in the petition to have been committed by the  
28 minor.

29 A determination that the minor is a fit and proper  
30 subject to be dealt with under the juvenile court law shall  
31 be based on a finding of amenability after consideration  
32 of the criteria set forth above, and findings therefor  
33 recited in the order as to each of the above criteria that  
34 the minor is fit and proper under each and every one of  
35 the above criteria. In making a finding of fitness, the court  
36 may consider extenuating or mitigating circumstances in  
37 evaluating each of the above criteria. In any case in which  
38 a hearing has been noticed pursuant to this section, the  
39 court shall postpone the taking of a plea to the petition  
40 until the conclusion of the fitness hearing and no plea

1 which may already have been entered shall constitute  
2 evidence at the hearing.

3 (f) Any report submitted by a probation officer  
4 pursuant to this section regarding the behavioral patterns  
5 and social history of the minor being considered for a  
6 determination of unfitness shall include any written or  
7 oral statement offered by the victim, the victim's parent  
8 or guardian if the victim is a minor, or if the victim has  
9 died, the victim's next of kin, as authorized by subdivision  
10 (b) of Section 656.2. Victims' statements shall be  
11 considered by the court to the extent they are relevant to  
12 the court's determination of unfitness.

13 ~~SEC. 7.~~

14 SEC. 8. Section 828.1 of the Welfare and Institutions  
15 Code is amended to read:

16 828.1. (a) While the Legislature reaffirms its belief  
17 that juvenile criminal records, in general, should be  
18 confidential, it is the intent of the Legislature in enacting  
19 this section to provide for a limited exception to that  
20 confidentiality in cases involving serious acts of violence.  
21 Further, it is the intent of the Legislature that even in  
22 these selected cases the dissemination of juvenile  
23 criminal records be as limited as possible, consistent with  
24 the need to work with a student in an appropriate fashion,  
25 and the need to protect potentially vulnerable school staff  
26 and other students over whom the school staff exercises  
27 direct supervision and responsibility.

28 (b) Notwithstanding subdivision (a) of Section 828, a  
29 school district police or security department may provide  
30 written notice to the superintendent of the school district  
31 that a minor enrolled in a public school maintained by  
32 that school district, in kindergarten or any of grades 1 to  
33 12, inclusive, has been found by a court of competent  
34 jurisdiction to have illegally used, sold, or possessed a  
35 controlled substance as defined in Section 11007 of the  
36 Health and Safety Code or to have committed any crime  
37 listed in paragraphs (1) to (15), inclusive, or paragraphs  
38 (17) to (19), inclusive, or paragraphs (25) to (28),  
39 inclusive, of subdivision (b) of, or in paragraph (2) of  
40 subdivision (d) of, or subdivision (e) of, Section 707. The

1 information may be expeditiously transmitted to any  
2 teacher, counselor, or administrator with direct  
3 supervisory or disciplinary responsibility over the  
4 minor, who the superintendent or his or her designee,  
5 after consultation with the principal at the school of  
6 attendance, believes needs this information to work with  
7 the student in an appropriate fashion, to avoid being  
8 needlessly vulnerable or to protect other persons from  
9 needless vulnerability.

10 (c) Any information received by a teacher, counselor,  
11 or administrator pursuant to this section shall be received  
12 in confidence for the limited purpose for which it was  
13 provided and shall not be further disseminated by the  
14 teacher, counselor, or administrator. An intentional  
15 violation of the confidentiality provisions of this section is  
16 a misdemeanor, punishable by a fine not to exceed five  
17 hundred dollars (\$500).

18 ~~SEC. 8.~~

19 *SEC. 9.* It is the intent of the Legislature in enacting  
20 this act to do both of the following:

21 (a) Make all necessary cross-referencing changes to  
22 fully implement Assembly Bill 59 (Chapter 817 of the  
23 Statutes of 1997).

24 (b) Declare and clarify that subdivision (b) of Section  
25 208 of the Penal Code provides for an enhanced penalty  
26 for a violation of Section 207 of the Penal Code and is not  
27 a distinct substantive crime.

28 ~~SEC. 9.~~

29 *SEC. 10.* It is not the intent of the Legislature in  
30 enacting this act to change the law as interpreted by the  
31 Court of Appeal or the Supreme Court regarding the  
32 asportation standard necessary to establish a violation of  
33 Section 207 of the Penal Code.

34 ~~SEC. 10.~~

35 *SEC. 11.* No reimbursement is required by this act  
36 pursuant to Section 6 of Article XIII B of the California  
37 Constitution because the only costs that may be incurred  
38 by a local agency or school district will be incurred  
39 because this act creates a new crime or infraction,  
40 eliminates a crime or infraction, or changes the penalty

for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

*SEC. 12. Section 4.5 of this bill incorporates amendments to Section 1170.1 of the Penal Code proposed by both this bill and SB 1900. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 1170.1 of the Penal Code, and (3) this bill is enacted after SB 1900, in which case Section 4 of this bill shall not become operative.*

*SEC. 13. Section 5.5 of this bill incorporates amendments to Section 12022.53 of the Penal Code proposed by both this bill and SB 2168. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 12022.53 of the Penal Code, and (3) this bill is enacted after SB 2168, in which case Section 5 of this bill shall not become operative.*

*SEC. 14. Section 6.5 of this bill incorporates amendments to Section 676 of the Welfare and Institutions Code proposed by both this bill and SB 2168. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 676 of the Welfare and Institutions Code, and (3) this bill is enacted after SB 2168, in which case Section 6 of this bill shall not become operative.*

*SEC. 15. Section 7.5 of this bill incorporates amendments to Section 707 of the Welfare and Institutions Code proposed by both this bill and SB 2168. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 1999, (2) each bill amends Section 707 of the Welfare and Institutions Code, and (3) this bill is enacted after SB 2168*

1 *in which case Section 7 of this bill shall not become*  
2 *operative.*

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